

Application No. 10/749,368
Response dated August 17, 2006
Reply to Office Action of May 19, 2006

REMARKS

Claims 1–64 are presented for Examiner Hill's consideration.

The Examiner has suggested a new title. Applicants have amended the title generally as suggested. However, Applicants have omitted the words "Elastic Outer Layer and" because this limitation is not included in any of the independent claims 1, 22, 43, or 64 and therefore is unnecessarily limiting and not descriptive of the invention.

No new matter has been added.

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendment and remarks and the following arguments is respectfully requested.

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ARGUMENTS

By way of the Office Action mailed May 19, 2006, claims 1–6, 8–27, 29–48 and 50–64 stand rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 4,895,569 to Wilson (hereinafter *Wilson*) in view of U.S. Patent Number 4,990,147 to Freeland (hereinafter *Freeland*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. M.P.E.P. § 2142, 2143. If one or more of the criteria are missing, the Examiner has failed to establish a *prima facie* case of obviousness and the rejection should be withdrawn.

The combination of *Wilson* and *Freeland* does not teach or suggest all the claim limitations.

Applicants' claims 1 and 22 require, in part, that

the outer surface of the outer layer in the front waist region includes a fastener ... adapted to engage into the elastic inner layer in the back waist region and the inner surface of the elastic inner layer in the back waist region includes a fastener ... adapted to engage into the outer surface of the outer layer in the front waist region.

Wilson does not teach or suggest at least the following elements of Applicants' claims 1 and 22.

1. The outer surface of the outer layer in the front waist region of *Wilson* does NOT include a fastener as required by Applicants' claims. To the contrary, the front fasteners 46 and 48 of *Wilson* are on the inner surface of the outer layer in the front waist region as can be seen in figures 1 and 2.

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2. The front fasteners 46 and 48 of *Wilson* are NOT adapted to engage into the inner layer in the back waist region as required by Applicants' claims. Instead, the front fasteners 46 and 48 of *Wilson* are adapted to engage complementary fasteners 42 and 44. Additionally, in *Wilson*, the inner layer 34, which is part of the absorbent structure 32, is not even close to the rear fasteners 42 and 44 as can be seen in figure 2. Therefore, the front fasteners 46 and 48 are clearly NOT adapted to engage into the inner layer 34.
3. The inner surface of the elastic inner layer in the back waist region of *Wilson* does NOT include a fastener. Figure 2 illustrates that no part of the inner layer includes a fastener. The only fasteners in the back waist region are located on the outer surface of the outer cover not the inner surface of the inner layer as required by Applicants' claims.
4. The back fasteners 42 and 44 of *Wilson* are NOT adapted to engage into the outer surface of the outer layer. Instead, the back fasteners 42 and 44 of *Wilson* are adapted to engage the front fasteners 46 and 48 not the outer layer. Additionally, the front fasteners 46 and 48 of *Wilson* are located on the inner surface of the outer layer as illustrated by figure 2. Therefore, the back fasteners 42 and 44 of *Wilson* are not even adapted to engage the outer surface of any layer.

Freeland discloses a disposable absorbent article having tapes 42 disposed on the inner surface of the backsheets 14 in the back waist region (col. 2: ll. 59-61) not on the inner surface of the inner layer as required by Applicants' claims. Additionally, the tapes of *Freeland* are not adapted to engage into the outer surface of the outer layer in the front waist region. Finally, *Freeland* does not include a fastener located on the outer surface of the outer layer in the front waist region adapted to engage into the elastic inner layer in the back waist region. Therefore, the addition of *Freeland* does not cure the defects of *Wilson*.

Therefore, for any or all of these reasons, no *prima facie* case of obviousness has been established for claims 1 and 22 because the combination of *Wilson* and *Freeland*

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fails to teach or suggest all the limitations of Applicants' claims 1 and 22. Claims 5-6, 8-21, 23-27, and 29-42 depend from either claim 1 or claim 22 and are patentably distinct over the combination of *Wilson* and *Freeland* for at least the same reasons as claims 1 and 22 discussed above. The rejection as to these claims should be withdrawn.

Applicants' claims 43 and 64 require, in part,

a front ear portion bonded to each longitudinal side edge in the front waist region . . . the front ear portion comprises a fastener on the outer layer surface, the fastener adapted to engage into the elastic inner layer in the back waist region; and

a back ear portion bonded to each longitudinal side edge in the back waist region . . . the back ear portion comprises a fastener on the elastic inner layer surface, the fastener adapted to engage into the outer layer in the front waist region.

Wilson does not teach or suggest at least the following elements of Applicants' claims 43 and 64.

1. *Wilson* does not suggest or teach front ear portions bonded to each longitudinal side edge in the front waist region as required by Applicants' claims. The front ear portions 24 and 26 of *Wilson* are integral with the front panel 28 and are therefore not bonded to the waist region.
2. *Wilson* does not suggest or teach back ear portions bonded to each longitudinal side edge in the back waist region as required by Applicants' claims. The back ear portions 20 and 22 of *Wilson* are integral with the back panel 30 and are therefore not bonded to the waist region.
3. As discussed above, the front fasteners 46 and 48 of *Wilson* are NOT adapted to engage into the inner layer in the back waist region. Instead the front fasteners 46 and 48 of *Wilson* are adapted to engage other fasteners 42 and 44. Additionally, in *Wilson*, the inner layer 34, which is part of the absorbent structure 32, is not even close to the rear fasteners 42 and 44 as can be seen in figure 2. Therefore, the front fasteners 46 and 48 are clearly not adapted to engage into the inner layer 34.

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4. As discussed above, the back fasteners 42 and 44 of *Wilson* are NOT adapted to engage into the outer surface of the outer layer in the front waist region. Instead, the back fasteners 42 and 44 of *Wilson* are adapted to engage the front fasteners 46 and 48 not the outer layer. Additionally, the back fasteners of *Wilson* 42 and 44 are adapted to engage the front fasteners 46 and 48 which are attached to the inner surface of the outer layer in the front waist region as illustrated by figure 2.

Freeland fails to teach a front ear portion bonded to each longitudinal side edge in the front waist region. *Freeland* fails to teach a front ear portion comprising a fastener adapted to engage into the elastic inner layer in the back waist region. *Freeland* fails to teach a back ear portion bonded to each longitudinal side edge in the back waist region. Therefore, the addition of *Freeland* does not cure the defects of *Wilson*. Therefore, for any or all of these reasons, no *prima facie* case of obviousness has been established because the combination of *Wilson* and *Freeland* fails to teach or suggest all the limitations of Applicants' claims 43 and 64. Claims 44-48, and 50-63 depend from claim 43 and are patentably distinct over the combination of *Wilson* and *Freeland* for at least the same reasons as claims 43 and 64 discussed above. Therefore, the rejections as to these claims should be withdrawn.

Applicants invite the Examiner to carefully distinguish between the term "layer" and the term "surface." A given "layer" has two major "surfaces." Applicants direct the Examiner's attention to the specification at page 5, lines 15-19, which states, "the outer layer and the elastic inner layer are generally planar and both may have an inner surface and an outer surface. When the garments are worn, the inner surfaces are the surfaces that are in closest proximity to the skin of the wearer. The outer surfaces are in closest proximity to the clothing of the wearer." Therefore, the 'inner surface' of the outer layer is the surface of the outer layer that is in closest proximity to the skin of the wearer as opposed to the outer surface of the outer layer which is the surface of the outer layer that is in closest proximity to the clothing of the wearer.

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By way of the Office Action mailed May 19, 2006, claims 7, 28 and 49 stand rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 4,895,569 to Wilson (*Wilson*) in view of U.S. Patent Number 4,990,147 to Freeland (*Freeland*) as applied to Claim 1, and further in view of U.S. Patent Number 5,690,627 to Clear et al. (hereinafter *Clear*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

As discussed previously, the combination of *Wilson* and *Freeland* fails to teach or suggest all the claim limitations of Applicants' claims 1, 22, and 43. The addition of *Clear* does not cure the defects of *Wilson* and *Freeland* and the combined references fail to teach or suggest all the claim limitations. Claims 7, 28, and 49 depend from claims 1, 22, and 43 and are patentably distinct over the combination of *Wilson*, *Freeland*, and *Clear* for at least the same reason as claims 1, 22, and 43 discussed above. Therefore, the rejections as to these claims should be withdrawn.

For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at (920)721-3016.

Respectfully submitted,

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